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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,159	02/14/2002	Brian Thomas Roach	AD6858USNA	8623

23906 7590 09/16/2003

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WILMINGTON, DE 19805

EXAMINER

KILIMAN, LESZEK B

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 09/16/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

10/076,159

Applicant(s)

ROACH, BRIAN THOMAS

Examiner

leszek b killiman

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baumgartner'888 in view of Flores'124.

The applied Baumgartner'888 reference discloses ethylene based copolymer pellets and a method of forming free flowing ethylene based copolymer pellets substantially as claimed. See Abstract, Column 1, lines 40-50, Summary of the Invention, column 3, lines 1-45, Example 1, Tables and Claims. The limitations of the dependent claims are all disclosed therein. Note that the claimed aliphatic chains of both the reference and the claimed invention are disclosed in the Flores'124.

The Baumgartner'888 differs from the claimed invention in that a surface coating agent, a metal salt of an aliphatic acid, has fewer than 12 carbon atoms as opposed to 12-22 in the reference. Also, the Baumgartner'888 reference uses an aqueous dispersion of the aliphatic acids salts in the process as opposed to an aqueous solution of the aliphatic acids salts in the claimed invention.

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However, the applied Flores'124 reference discloses that it is known in the art to use aliphatic acids salts to surface treat the ethylene based copolymer pellets and shows that such a treatment may be performed in the aqueous solution. See Summary of the Invention, Column 3, lines 28-32, lines 60-65, Example 1, Claims.

It would have been obvious to one having ordinary skill in the art at the time of the invention to apply the teaching of Flores'124 to the invention of Baumgarner'888 and use lower aliphatic acid salts in an aqueous solution to treat the surface of the ethylene based polymer pellets since Flores'124 has shown that such a treatment reduces the tendency of the particles to block and stick.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,500,888 in view of 4,463,124..

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The applied Baumgartner'888 reference discloses ethylene based copolymer pellets and a method of forming free flowing ethylene based copolymer pellets substantially as claimed. See Abstract, Column 1, lines 40-50, Summary of the Invention, column 3, lines 1-45, Example 1, Tables and Claims. The limitations of the dependent claims are all disclosed therein. Note that the claimed aliphatic chains of both the reference and the claimed invention are disclosed in the Flores'124.

The Baumgartner'888 differs from the claimed invention in that a surface coating agent, a metal salt of an aliphatic acid, has fewer than 12 carbon atoms as opposed to 12-22 in the reference. Also, the Baumgartner'888 reference uses an aqueous dispersion of the aliphatic acids salts in the process as opposed to an aqueous solution of the aliphatic acids salts in the claimed invention.

However, the applied Flores'124 reference discloses that it is known in the art to use aliphatic acids salts to surface treat the ethylene based copolymer pellets and shows that such a treatment may be performed in the aqueous solution. See Summary of the Invention, Column 3, lines 28-32, lines 60-65, Example 1, Claims.

It would have been obvious to one having ordinary skill in the art at the time of the invention to apply the teaching of Flores'124 to the invention of Baumgartner'888 and use lower aliphatic acid salts in an aqueous solution to treat the surface of the ethylene based polymer pellets since Flores'124 has shown that such a treatment reduces the tendency of the particles to block and stick.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to leszek b kiliman whose telephone number is 703-308-2373. The examiner can normally be reached on M-T, 6.30-5.00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, paul thibodeau can be reached on 703-308-2367. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-3080661.

lk



LESZEK KILIMAN, PhD  
PRIMARY EXAMINER